

Decision **DRAFT DECISION OF ALJ WALWYN (Mailed 4/27/2004)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**OPINION ON PACIFIC GAS AND ELECTRIC COMPANY'S
DECEMBER 4, 2003 PETITION TO MODIFY DECISION 02-10-062****I. Summary**

This decision grants, in part, Pacific Gas and Electric Company's (PG&E) December 4, 2003 "Petition to Modify Decision (D.) 02-10-062 for Waiver for Gas Transmission Northwest Corporation (GTN) Services in connection with California Department of Water Resources' (DWR) PPM Energy Inc. Contract (PPM)" (petition). The requested relief we grant is a waiver of D.02-10-062's prohibition on affiliate transactions for the purpose of PG&E's transactions with GTN as a limited agent for DWR in connection with the new rights DWR has secured under its amended contract with PPM.¹ We modify PG&E's request for a

¹ GTN is a subsidiary of National Energy & Gas Transmission, Inc. (NEGT), a subsidiary of PG&E Corporation (PG&E's parent company). A pending sale of GTN to Trans-Canada Corporation was announced on February 24, 2004. This sale will be subject to bankruptcy court approval since NEGTE filed for protection under Chapter 11 of the U.S. Bankruptcy Code in July 2003.

waiver from D.02-10-062's requirement to use a competitive procurement process for obtaining additional transmission pipeline-related services needed to achieve fuller benefits of the GTN capacity right.

II. Discussion

Pursuant to Res. E-3825 and Res. E-3845, PG&E is required to obtain a waiver from the standards of behavior adopted in D.02-10-062 if it seeks to use an affiliate company to obtain and/or manage gas supplies for the DWR contracts it administers.² In accordance with this requirement, PG&E filed this petition on December 4, 2003. No party filed a response to PG&E's petition.

In its petition, PG&E seeks a waiver to transact with its affiliate GTN on behalf of DWR under the November 10, 2003 amended DWR contract with PPM. This waiver is necessary because DWR has acquired new rights under its PPM contract to (1) supply gas to the PPM generation facility at Klamath Falls, Oregon when it is dispatched by PG&E and (2) have the benefit of PPM's firm capacity on GTN's gas transmission pipeline.

PG&E also seeks a waiver to transact with GTN for additional services to enhance DWR's new pipeline transmission rights and, in conjunction with this, to secure a waiver to obtain these services from GTN without using a competitive solicitation process. PG&E anticipates using the following additional GTN services:

² These resolutions approved PG&E's Gas Supply Plans for obtaining and managing gas supplies for the DWR contracts it was allocated to administer under D.02-09-053.

- Pool to pool transfers (moving DWR's gas from the GTN system to another shipper or to the PG&E system. No fees are involved in this transfer under GTN's present tariffs.)
- Parking and lending services (tariff-based services for short-term storage and borrowing gas).
- Transportation services (backhaul, interruptible and brokered firm capacity).

PG&E asserts that in order to maximize the effectiveness of its administrative and operational responsibilities for managing the PPM contract, it must obtain the above services from GTN and deal directly with GTN on behalf of DWR. PG&E states that as DWR's limited agent, it will not pursue firm capacity on GTN's system directly with GTN without review by DWR, PG&E's procurement review group, and Commission staff.

Based on the facts set forth in its petition, PG&E has shown that the amended contract DWR has secured with PPM makes it necessary for PG&E to transact with GTN in order to realize the benefits of DWR's new rights. The Commission recognized that PG&E may need to transact with affiliates in administering DWR contracts in Res. E-3825 and made these transactions subject to review via a Petition to Modify D.02-10-062. In D.04-01-050, we ordered a management audit to further address our concerns and adopted the following exception to our permanent ban on affiliate transactions:

“Transactions for natural gas services between SDG&E and SoCalGas and between PG&E and affiliates and operating divisions that are found necessary and beneficial for ratepayer interests. These transactions should be subject to the rules adopted in Res. E-3838 and Res. E-3825 pending receipt and review of the management audits ordered here.” (D.04-01-050 at page 79.)

We find that PG&E has shown that transactions with its affiliate GTN, in connection with the new rights DWR has secured under its amended contract with PPM Energy, are necessary and beneficial for ratepayer interests. Therefore, we will grant PG&E's request for a waiver from D.02-10-062 in order to allow these transactions to occur.

We do not agree with PG&E's assertion that it requires a complete waiver from D.02-10-062's requirement to use a competitive procurement process in order to obtain additional transmission pipeline related services. In particular, parking and lending and capacity brokering are services with other suppliers, and other services³ cited by PG&E may also have, or develop, potential suppliers.

In its response to the ALJ's draft decision mailed on April 27, 2004, PG&E filed comments requesting the draft decision be changed to grant a modified waiver from D.02-10-062's requirement to use a competitive procurement process. PG&E states that: (1) for backhaul services on GTN, service is only available directly from the pipeline; (2) for interruptible transportation services, services of less than one month is only available directly from the pipeline, and for services of one to three months it is impractical to use a formal Request For Proposal (RFO) process; (3) for transportation services for released firm capacity it is impractical to use a formal RFO process; and (4) for parking and lending services the transactions are generally too small and need to be too quickly negotiated to make it practical to use a formal RFO process. Therefore, PG&E requests the following modified waiver of D.02-10-062's requirement to use a competitive procurement process:

³ For parking and lending services, the alternative supplier is PG&E's own utility provided service.

- A. Waive D.02-10-062's competitive procurement process for the following services:
- Backhaul service on GTN;
 - Interruptible transportation services on GTN for transactions with terms less than one calendar month; and
 - Parking and lending services where the fees are less than one thousand dollars.
- B. Allow PG&E to satisfy D.02-10-062's competitive procurement process requirement by conducting telephone solicitations for interruptible transportation services and released firm pipeline capacity on GTN for terms of one to three calendar months.
- C. Allow PG&E to satisfy D.02-10-062's competitive procurement process requirement by conducting telephone solicitations for parking and lending services where the fees are greater than one thousand dollars.

In a May 20, 2004 memorandum to the Commission, DWR states that it supports PG&E's modified request. Based on the record here, we find that the modified waiver is reasonable and should be granted.

III. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. PG&E timely filed comments on May 17, 2004 and DWR submitted a memo supporting PG&E's requested changes on May 20, 2004.

Based on comments received, the draft decision is revised to accept PG&E's requested changes.

IV. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

Findings of Fact

1. The DWR has acquired new rights under a November 10, 2003 amendment to its contract with PPM. These new rights are (1) for DWR to supply gas to the PPM generation facility at Klamath Falls, Oregon when it is dispatched by PG&E, and (2) for DWR to have the use and benefit of PPM's firm capacity on GTN's gas transmission line.

2. The new amendment benefits ratepayer interests.

3. Given the ratepayer benefit, it is permissible for PG&E to transact directly with its affiliate GTN in PG&E's role as a limited agent for DWR in connection with the new rights DWR has secured under its amended contract with PPM.

4. Some of the additional transmission pipeline related services PG&E anticipates using in connection with DWR's new rights have competitive suppliers.

5. The comments of PG&E and DWR establish that it is reasonable to:

A. Waive D.02-10-062's competitive procurement process for the following services:

- Backhaul service on GTN;
- Interruptible transportation services on GTN for transactions with terms less than one calendar month; and
- Parking and lending services where the fees are less than one thousand dollars.

B. Allow PG&E to satisfy D.02-10-062's competitive procurement process requirement by conducting telephone solicitations for interruptible transportation services and

released firm pipeline capacity on GTN for terms of one to three calendar months.

- C. Allow PG&E to satisfy D.02-10-062's competitive procurement process requirement by conducting telephone solicitations for parking and lending services where the fees are greater than one thousand dollars.

In a May 20, 2004 memorandum to the Commission, DWR states that it supports PG&E's modified request. Based on the record here, we find that the modified waiver is reasonable and should be granted.

6. PG&E, as DWR's limited agent, will not pursue firm capacity on GTN's system directly with GTN without review by DWR, PG&E's PRG, and Commission staff.

Conclusions of Law

1. PG&E request for a waiver of D.02-10-062's prohibition on affiliate transactions for the purpose of PG&E's transactions with GTN as a limited agent for DWR in connection with the new rights DWR has secured under its amended contract with PPM should be granted.

2. PG&E's request for a modified waiver of D.02-10-062's requirement to use a competitive procurement process in order to obtain additional transmission pipeline related services should be granted.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) as modified, request for a waiver of Decision (D.) 02-10-062's prohibition on affiliate transactions for the purpose of PG&E's transactions with its affiliate Gas Transmission Northwest Corporation (GTN) in PG&E's role as a limited agent for California Department

of Water Resources (DWR) in connection with the new rights DWR has secured under its amended contract with PPM Energy, Inc. is granted.

2. PG&E's request for a waiver of D.02-10-062's requirement for a competitive procurement process is granted in part, as follows:

A. Waive D.02-10-062's competitive procurement process for the following services:

- Backhaul service on GTN;
- Interruptible transportation services on GTN for transactions with terms less than one calendar month; and
- Parking and lending services where the fees are less than one thousand dollars.

B. Allow PG&E to satisfy D.02-10-062's competitive procurement process requirement by conducting telephone solicitations for interruptible transportation services and released firm pipeline capacity on GTN for terms of one to three calendar months.

C. Allow PG&E to satisfy D.02-10-062's competitive procurement process requirement by conducting telephone solicitations for parking and lending services where the fees are greater than one thousand dollars.

3. In all other respects, PG&E's petition is denied.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.